

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

OLLEN G. COLBERT

Plaintiff

v.

**CINCINNATI GAS & ELECTRIC and
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 1347**

Defendants.

CASE NO. 1:00-CV-00909-SJD-TSH

**JUDGE: J. Dlott
Magistrate Judge Hogan**

MOTION FOR SUMMARY JUDGMENT

Defendant, Cincinnati Gas & Electric ("CG&E"), by counsel, pursuant to Fed.R.Civ.P. 56, respectfully moves for summary judgment on all of plaintiff's claims against CG&E as there are no genuine issues of material fact and 1) plaintiff's claims based on disciplinary actions and/or a demotion predating 1999 are barred by his failure to file suit within 90 days of receipt of right to sue notices; 2) plaintiff has no direct evidence of disparate treatment and cannot make a prima facie showing of race discrimination; 3) there is no evidence of racial harassment; 4) plaintiff cannot make a prima facie showing of retaliation; and 5) plaintiff failed to allege any violation of the CBA by CG&E, is collaterally estopped from arguing that his discipline or his termination violated the CBA, and there is no evidence of such a violation in any event. In support of this Motion, CG&E submits the Depositions of Ollen Colbert of February 10, 2003 and November 11, 2004 and exhibits thereto, the Deposition of Donald Bricking of December 10, 2004, its Brief and Statement of Uncontested Material Facts.

WHEREFORE, CG&E requests that its Motion for Summary Judgment on Plaintiff's claims be GRANTED and judgment be entered in CG&E's favor and against the Plaintiff, Ollen G. Colbert on all claims.

Respectfully submitted,

CINERGY CORP.

By: s/Ariane Schallwig Johnson
Ariane Schallwig Johnson, # 0077236
One of the Attorneys for Cincinnati Gas &
Electric

CERTIFICATE OF SERVICE

I hereby certify that on **January 13, 2005**, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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